In the High Court of Judicature at Madras

Dated: 24/09/2003

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The Hon'ble Mr. Justice V.S. SIRPURKAR
and
The Hon'ble Mr. Justice AR. RAMALINGAM

H.C.P. No. 2531 of 2002

K. Jayaraman,
1/62, Jawahar Nagar,
Salem City and District. ... Petitioner

-Vs-

1. The Commissioner of Police,
Salem City,
Salem District.

2. The Secretary to Govt.
of Tamil Nadu,
Prohibition & Excise Dept.
Fort St. George,
Madras 600 009. ... Respondents

Petition under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondents to produce the detenu namely Vakkil Kandasamy @ Kandasamy before this Hon' ble Court who is detained as per the order of detention passed by the first respondent in C.M.P. No: 40/Goondas/2002 dated 17.11.2002 and confined at Central Prison, Salem and set him at liberty and further direction to call for the records and set aside the same.

!For petitioner : Mr.K. Manivasakam

^For respondents : Mr.A. Navaneethakrishnan
Addl. Public Prosecutor.

:O R D E R

(Order of the Court was
made by V.S. SIRPURKAR, J.)

The order dated 17.11.2002 passed by the Commissioner of Police, Salem, dubbing one Vakkil Kandasamy @ Kandasamy S/o. Kulandaivelu as a "Goonda" and directing his detention under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of bootleggers, Drug Offenders, Forest

Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14 of 1982) is challenged in this petition. The said person is suggested to have been involved in a criminal case and also in an incident dated 7.10.2002 involving murder of one Kumar, which took place in Shanmugha Nagar at about 10'o clock at night at 6.10.2002.

2. The fact suggests that, on that date, one Manickam came and reported before the police that he had three sons Kumar, Rajendran and Thangaraj and his daughter Alamelu was married to one Boopathi. However, the said Alamelu came back leaving her husband and started staying with one Kannan S/o. Raju and from that time the relationship between the families of Manickam and Kannan became strained. It was pointed out that on account of his sister's behaviour and on account of Kannan staying with his sister, Kumar was irritated and he requested Kannan to send back his sister Alamelu and on that count enmity between Kumar and Kannan prevailed and there used to be petty quarrels. Kumar was also given some threats by one Vakkil Kandasamy, the detenu herein and Durai, who were the supporters of Kannan. The grounds further suggests that Kumar was also beaten up by Vakkil Kandasamy, detenu, and Durai and there was a compromise effected between them by panchayatdars.

3. On the fateful day, when Kumar went for his salary to his master, he did not return till 10.00 p.m. and it turned out that he had been seen in the company of Vakkil Kandasamy, Durai and Kannan. When he was not found even after enquiring with these persons, the body of Kumar was found on the vacant land on the backside of E.B. Office close to a footpath. It was stated that on this count, on seeing the murder, public alarm was caused and the tranquility was disturbed.

4. The detaining authority has also taken into consideration the fact that all these persons viz. Vakkil Kandasamy, the detenu, Kannan and Durai, were rowdies having been involved in offences earlier. A further reference has been made to the investigation into the murder of Kumar and the fact that Kumar was murdered at about 10'o clock at night by five persons including Vakkil Kandasamy, the detenu.

5. The learned counsel for the petitioner Mr.K.Manivasakam argues that there was no disturbance to the public order and the ground case, at the most, can be described only to be a disturbance to the law and order situation. He points out that the murder took place at night and, therefore, there was no question of the said murder being seen by anybody and, for that matter, there being any alarm on account of the murder. He, therefore, relied on the judgments of the Supreme Court reported in J.T. 2003 (1) S.C.C. 176 (Darpan Kumar Sharma @ Dharban Kumar Sharma vs. State of Tamil Nadu and others) and A.I.R. 1988 SC 1013 (Smt. Tarannum vs. Union of India and others). He also relied on the judgment reported in 1991 Law Weekly Criminal 463 (S. Subash Babu and another vs. State of Tamil Nadu and another) as also on an unreported judgment of this Court made in H.C.P. No: 1274 of 1998 decided on 17.3.1999 by N.DHINAKAR and V. BAKTHAVATSALU, JJ.

6. As against this, the learned Additional Public Prosecutor points out that these persons and more particularly the detenu was a known rowdy in the locality and he was involved in number of incidents earlier also; this was a small area where all these persons were dreaded and therefore, obviously the murder which was committed at about 10'o clock at night was not a secret affair. According to the learned Additional Public Prosecutor, the said murder took place at a public place near a foot path and there was material on

record, in the shape of the statements of several witnesses under Section 161 of Cr.P.C., to suggests that on account of this murder, an atmosphere of terror prevailed in the whole area and the whole area became tensed for a considerable span of time.

7. We will have to, therefore, see as to whether this incident was sufficient and whether there was any material before the concerned authorities to come to the conclusion that the incident had caused prejudice to the public order prevailing in the locality.

8. It must be at once seen that the murder was done in a very gruesome manner which is clear from the whole prosecution case stated in the grounds. The place was a public place and near a foot path in a busy locality where there would be some activity, this being an urban area of Salem, a city which is thickly populated and for which a Corporation is established. It is, therefore, not unlikely that there was an alarm in the whole locality particularly, because of this dare devil act of murder on the part of the accused persons, one of whom was the detenu. We are, therefore, convinced that the detaining authority had every reason to hold that there was a disturbance to the public order.

9. In A.I.R. 1998 S.C. 1013 (Smt. Tarannum vs. Union of India and others), to which we have already made a reference, the Supreme Court in paragraph 6, has given certain examples of the situation which could have an effect on the public order. Amongst them, the Supreme Court suggests, a repetition of the criminal act by a dare-devil, open shoot out, throwing bomb at public places, committing serious offences in public transport, armed persons going on plundering public properties or terrorising people may create a sense of insecurity in the public mind and may have an impact on 'public order'. The Supreme Court has further observed that,

"Even certain murder committed by persons in lonely places with the definite object of promoting the cause of the party to which they belong may also affect the maintenance of 'public order'."

In the case on hand, there is no question of any party being involved. But the fact remains that there was enmity between Kumar on the one side and the detenu and his friends on the other side. The detenu enjoys a reputation as a rowdy which is clear from the fact that he was involved in as many as three or four serious criminal cases.

10. We, therefore, are of the opinion that even if this detention is on account of the incident dated 6.10.2002, there was every material available to the detaining authority to come to the conclusion that there was disturbance to the public order.

11. The learned counsel for the petitioner invited our attention to the decision reported in JT 2003 S.C. 176. That was a case of looting at a point of knife. In that case, the Supreme Court observed that,

" Any disorderly behaviour of a person in the public or commission of a criminal offence is bound, to some extent, affect the peace prevailing in the locality and it may also affect law and order but the same need not affect maintenance of public order."

The only case, robbery of Rs.1,000/- at the point of knife, was not held to be a sufficient ground to affect the public order. The Supreme Court held in that case that the detenu therein was involved in three cases under Section 379 which were not relating to the public order and there was only a solitary incident where the detenu was said to have robbed a person in a public place.

In our opinion, the facts in the case in hand are entirely different. In this matter, the detenu was said to have been involved in the cases involving offences under Sections 341, 307, 506 (ii) and was also charged of being in unlawful assembly, being the member of the unlawful assembly and being armed in that assembly. Thus, he was charged with offences under Section 148 and 324 read with Section 506 of I.P.C. He was also involved in offences under Section 387 i.e. robbery and ultimately the offence of murder which was committed on the public place. In that view, the case on hand has to be distinguished on the facts.

12. In the unreported judgment in H.C.P. No: 1274 of 1998, the case turned on an entirely different issue. There, the Court gave a finding that there was not enough material to suggest that there was disturbance to the public order. There was a statement given by one witness Mehrunnisa under Section 161 of Cr.P.C. and beyond that, there was no material to hold that tensed situation prevailed in the locality. That is not the case here. Here, there are number of statements available which suggests that because of the murder in the public place, the normal tempo of the public life was disturbed. In that view, we would be slow to hold that there was no disturbance to the public order. In so far as the law laid down by this Court in 1991 Law Weekly Criminal 463 (S. Subash Babu and another vs. State of Tamil Nadu and another) is concerned, that is also a decision about difference between law and order and public order and that was also a case where the detenu was involved in looting in the public place. As we have already pointed out there is a subsequent judgment by the Supreme Court to which we have made a reference. We would choose to go by the subsequent pronouncement.

13. In that view, there was enough material before the detaining authority to come to the conclusion that the activities of the detenu were sufficient to cause prejudice to the public order and, therefore, the detaining authority was justified in ordering his detention. The writ petition is dismissed.

Index : Yes
Website: Yes

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To

1. The Commissioner of Police,
Salem City,
Salem District.

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of Tamil Nadu,
Prohibition & Excise Dept.
Fort St. George,
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